IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.MC.No. 2076 of 2007()

MC.32/2007 of JUDL.MAGISTRATE OF FIRST CLASS, SULTHANBATHERY

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PETITIONERS/ACCUSED:

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1. YASAPALAN M.C., S/O.M.K. CHAITHNYAN,
   TEACHER, PUTHEN VEEDU,
   KAPPIL P.O. EDAVA,
   THIRUVANANTHAPURAM DIST.

2. M.K. CHAITHANYAN, RETD. TEACHER
   PUTHENVEEDU, DO. DO.

3. VINODINI, W/O. CHAITHNAYAN, DO. DO.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENTS/COMPLAINANT & STATE:

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1. NISHA P.R.,M D/O. P.K. RADHAKRISHNAN
   'NISHA BHAVAN' KUPPADI P.O.
   SULTHAN BATHERY, WAYANAD.

2. THE STATE OF KERALA, REP. BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2076 of 2007

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Dated this the 28th day of June, 2007

O R D E R

The petitioners are the husband, father-in-law and mother-in-law respectively of the first respondent. The marriage relationship is admitted. The first respondent filed a petition before the learned Magistrate under the provisions of the Protection of Women from Domestic Violence Act (hereinafter referred to as DVA) claiming various reliefs. The petitioners have received notice from the said Court. The petitioners, instead of appearing before the learned Magistrate and raising their contentions, have rushed to this Court with this Crl.M.C. with a prayer that the powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against them.

2. What are the reasons? The learned counsel for the petitioners submits that even admittedly after the date on which the DVA came into force, there has been no cohabitation between the first respondent and the first petitioner. He therefore contends that, consequently it cannot be held that there is any "shared household" under Section 2(s) or any "domestic relationship" under Section 2(f) and consequently it cannot be held that there is any "domestic

violence" and consequently the first respondent cannot be reckoned as an "aggrieved person". It is in these circumstances prayed that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings initiated under the DVA.

3. I am unable to accept this contention at all. The argument ignores the crucial words in Section 2(s) that 'share hold' means a household where the aggrieved person lives "or at any stage has lived" in a domestic relationship. It also ignores the crucial importance of the definition of 'domestic relationship', which means a relationship between persons, who lived or "have at any point of time lived together" in shared household. It also ignores the crucial importance of the words in the definition of 'aggrieved person', which is defined as any woman who is "or has been in domestic relationship". Prima facie I am unable to accept the contention that to attract the provisions of the DVA the parties should have live together in a shared household after the commencement of the DVA. No principle or precedent is cited before me in support of this proposition and the argument on the face of it does not appear to be acceptable.

4. The learned counsel next contends that the first respondent can claim her reliefs before other for a and therefore the provisions of the DVA

are not applicable to the first respondent. I find absolutely no substance in this argument also as the provisions of the DVA are available to an aggrieved person notwithstanding the remedies and rights available under other enactments. There is no bar or exclusion under any provision.

5. Thirdly and finally it is contended that the petitioners have filed Annex.III complaint under Section 190 Cr.P.C. raising allegations against the first respondent under Sections 191 and 199 I.P.C. How such a petition would be maintainable is not clear. Be that as it may, the fact that the petitioners have initiated proceedings against the first respondent for having initiated proceedings under the DVA is no ground to assume that the jurisdiction of the court under the DVA will be ousted.

6. No other grounds are raised. I am satisfied that this Cri.M.C. is without any merit and only deserves to be dismissed.

7. This Crl.M.C. is accordingly dismissed. I make it clear that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate.

(R. BASANT)
Judge

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